

or before August 30, 1980. An election to specially value real property under section 2032A that is made on or before August 30, 1980, may be revoked. To revoke an election, the executor must file a notice of revocation with the Internal Revenue Service office where the original estate tax return was filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires). This notice of revocation must contain the decedent's name, date of death, and taxpayer identification number, and is to be accompanied by remittance of any additional amount of estate tax and interest determined to be due as a result of valuation of the qualified property based upon its fair market value. Elections that are made on or before August 30, 1980, that do not comply with this section as proposed on July 13, 1978 (43 FR 30070), and amended on December 21, 1978 (43 FR 59517), must be conformed to this final regulation by means of an amended return before the original estate tax return can be finally accepted by the Internal Revenue Service.

[T.D. 7710, 45 FR 50743, July 31, 1980, as amended by T.D. 7786, 46 FR 43037, Aug. 26, 1981]

**§ 20.2033-1 Property in which the decedent had an interest.**

(a) *In general.* The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death. (For certain exceptions in the case of real property situated outside the United States, see paragraphs (a) and (c) of § 20.2031-1.) Real property is included whether it came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Various statutory provisions which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are generally not applicable to the estate tax, since such tax is an excise tax on the transfer of property at

death and is not a tax on the property transferred.

(b) *Miscellaneous examples.* A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family. Property subject to homestead or other exemptions under local law is included in the gross estate. Notes or other claims held by the decedent are likewise included even though they are cancelled by the decedent's will. Interest and rents accrued at the date of the decedent's death constitute a part of the gross estate. Similarly, dividends which are payable to the decedent or his estate by reason of the fact that on or before the date of the decedent's death he was a stockholder of record (but which have not been collected at death) constitute a part of the gross estate.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6684, 28 FR 11409, Oct. 24, 1963]

**§ 20.2034-1 Dower or curtesy interests.**

A decedent's gross estate includes under section 2034 any interest in property of the decedent's surviving spouse existing at the time of the decedent's death as dower or curtesy, or any interest created by statute in lieu thereof (although such other interest may differ in character from dower or curtesy). Thus, the full value of property is included in the decedent's gross estate, without deduction of such an interest of the surviving husband or wife, and without regard to when the right to such an interest arose.

**§ 20.2036-1 Transfers with retained life estate.**

(a) *In general.* A decedent's gross estate includes under section 2036 the value of any interest in property transferred by the decedent after March 3, 1931, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043-1), if the decedent retained or reserved—

- (1) For his life;
- (2) For any period not ascertainable without reference to his death (if the

transfer was made after June 6, 1932); or

(3) For any period which does not in fact end before his death:

(i) The use, possession, right to income, or other enjoyment of the transferred property.

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate must be retained by or reserved to the decedent alone).

(b) *Meaning of terms.* (1) A reservation by the decedent “for any period not ascertainable without reference to his death” may be illustrated by the following examples:

(i) A decedent reserved the right to receive the income from transferred property in quarterly payments, with the proviso that no part of the income between the last quarterly payment and the date of the decedent’s death was to be received by the decedent or his estate; and

(ii) A decedent reserved the right to receive the income, annuity, or other payment from transferred property after the death of another person who was in fact enjoying the income, annuity, or other payment at the time of the decedent’s death. In such a case, the amount to be included in the decedent’s gross estate under this section does not include the value of the outstanding interest of the other person as determined in paragraphs (c)(1)(i) and (c)(2)(ii) of this section. See also, paragraphs (c)(1)(ii) *Example 1* and (c)(2)(iv) *Example 8* of this section. If the other person predeceased the decedent, the reservation by the decedent may be considered to be either for life, or for a period that does not in fact end before death.

(2) The “use, possession, right to the income, or other enjoyment of the transferred property” is considered as having been retained by or reserved to the decedent to the extent that the use, possession, right to the income, or other enjoyment is to be applied toward the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit. The term “legal obli-

gation” includes a legal obligation to support a dependent during the decedent’s lifetime.

(3) The phrase “right \* \* \* to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom” includes a reserved power to designate the person or persons to receive the income from the transferred property, or to possess or enjoy nonincome-producing property, during the decedent’s life or during any other period described in paragraph (a) of this section. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest; (ii) in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent’s control which did not occur before his death (e.g., the death of another person during the decedent’s lifetime). The phrase, however, does not include a power over the transferred property itself which does not affect the enjoyment of the income received or earned during the decedent’s life. (See, however, section 2038 for the inclusion of property in the gross estate on account of such a power.) Nor does the phrase apply to a power held solely by a person other than the decedent. But, for example, if the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered as having the powers of the trustee.

(c) *Retained or reserved interest*—(1) *Amount included in gross estate*—(i) *In general.* If the decedent retained or reserved an interest or right with respect to all of the property transferred by him, the amount to be included in his gross estate under section 2036 is the value of the entire property, less only the value of any outstanding income interest which is not subject to the decedent’s interest or right and which is actually being enjoyed by another person at the time of the decedent’s death. If the decedent retained or reserved an interest or right with respect to a part only of the property transferred by

him, the amount to be included in his gross estate under section 2036 is only a corresponding proportion of the amount described in the preceding sentence. An interest or right is treated as having been retained or reserved if at the time of the transfer there was an understanding, express, or implied, that the interest or right would later be conferred. If this section applies to an interest retained by the decedent in a trust or otherwise and the terms of the trust or other governing instrument provide that, after the decedent's death, payments the decedent was receiving during life are to continue to be made to the decedent's estate for a specified period (as opposed to payments that were payable to the decedent prior to the decedent's death but were not actually paid until after the decedent's death), such payments that become payable after the decedent's death are not includible in the decedent's gross estate under section 2033 because they are properly reflected in the value of the trust corpus included under this section. Payments that become payable to the decedent prior to the decedent's date of death, but are not paid until after the decedent's date of death, are includible in the decedent's gross estate under section 2033.

(ii) *Examples.* The application of paragraph (c)(1)(i) of this section is illustrated in the following examples:

*Example 1.* Decedent (D) creates an irrevocable inter vivos trust. The terms of the trust provide that all of the trust income is to be paid to D and D's child, C, in equal shares during their joint lives and, on the death of the first to die of D and C, all of the trust income is to be paid to the survivor. On the death of the survivor of D and C, the remainder is to be paid to another individual, F. Subsequently, D dies survived by C. Fifty percent of the value of the trust corpus is includible in D's gross estate under section 2036(a)(1) because, under the terms of the trust, D retained the right to receive one-half of the trust income for D's life. In addition, the excess (if any) of the value of the remaining 50 percent of the trust corpus, over the present value of C's outstanding life estate in that 50 percent of trust corpus, also is includible in D's gross estate under section 2036(a)(1), because D retained the right to receive all of the trust income for such time as D survived C. If C had predeceased D, then 100 percent of the trust corpus would have been includible in D's gross estate.

*Example 2.* D transferred D's personal residence to D's child (C), but retained the right to use the residence for a term of years. D dies during the term. At D's death, the fair market value of the personal residence is includible in D's gross estate under section 2036(a)(1) because D retained the right to use the residence for a period that did not in fact end before D's death.

(2) *Retained annuity, unitrust, and other income interests in trusts—(i) In general.* This paragraph (c)(2) applies to a grantor's retained use of an asset held in trust or a retained annuity, unitrust, or other interest in any trust (other than a trust constituting an employee benefit) including without limitation the following (collectively referred to in this paragraph (c)(2) as "trusts"): Certain charitable remainder trusts (collectively CRTs) such as a charitable remainder annuity trust (CRAT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any charitable remainder trust that does not qualify under section 664(d), whether because the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or otherwise; other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT) paying out a qualified annuity interest within the meaning of § 25.2702-3(b) of this chapter, a grantor retained unitrust (GRUT) paying out a qualified unitrust interest within the meaning of § 25.2702-3(c) of this chapter; and various other forms of grantor retained income trusts (GRITs) whether or not the grantor's retained interest is a qualified interest as defined in section 2702(b), including without limitation a qualified personal residence trust (QPRT) within the meaning of § 25.2702-5(c) of this chapter and a personal residence trust (PRT) within the meaning of § 25.2702-5(b) of this chapter. If a decedent transferred property into such a trust and retained or reserved the right to use such property, or the right to an annuity, unitrust, or other interest in such trust with respect to the property decedent so transferred for decedent's life, any period not ascertainable without reference to the decedent's death, or for a period that

does not in fact end before the decedent's death, then the decedent's right to use the property or the retained annuity, unitrust, or other interest (whether payable from income and/or principal) constitutes the retention of the possession or enjoyment of, or the right to the income from, the property for purposes of section 2036. The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained use or retained annuity, unitrust, or other payment (without reducing or invading principal). In the case of a retained annuity or unitrust, the portion of the trust's corpus includible in the decedent's gross estate is that portion of the trust corpus necessary to generate sufficient income to satisfy the retained annuity or unitrust (without reducing or invading principal), using the interest rates provided in section 7520 and the adjustment factors prescribed in § 20.2031-7 (or § 20.2031-7A), if applicable. The computation is illustrated in paragraph (c)(2)(iv), *Examples 1, 2, and 3* of this section. The portion of the trust's corpus includible in the decedent's gross estate under section 2036, however, shall not exceed the fair market value of the trust's corpus at the decedent's date of death.

(ii) *Decedent's retained annuity following a current annuity interest of another person.* If the decedent retained the right to receive an annuity or other payment (rather than income) after the death of the current recipient of that interest, then the amount includible in the decedent's gross estate under this section is the amount of trust corpus required to produce sufficient income to satisfy the entire annuity or other payment the decedent would have been entitled to receive if the decedent had survived the current recipient (thus, also including the portion of that entire amount payable to the decedent before the current recipient's death), reduced by the present value of the current recipient's interest. However, the amount includible shall not be less than the amount of corpus required to produce sufficient income to satisfy the annuity or other payment the decedent was entitled, at

the time of the decedent's death, to receive for each year. In addition, in no event shall the amount includible exceed the value of the trust corpus on the date of death. Finally, in calculating the present value of the current recipient's interest, the exhaustion of trust corpus test described in § 20.7520-3(b)(2) (exhaustion test) is not to be applied, even in cases where § 20.7520-3(b)(2) would otherwise require it to be applied. The following steps implement this computation.

(A) *Step 1:* Determine the fair market value of the trust corpus on the decedent's date of death.

(B) *Step 2:* Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment (determined on the date of the decedent's death) payable to the decedent for the trust year in which the decedent's death occurred.

(C) *Step 3:* Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment that the decedent would have been entitled to receive for each trust year if the decedent had survived the current recipient.

(D) *Step 4:* Determine the present value of the current recipient's annuity, unitrust, or other payment (without applying the exhaustion test).

(E) *Step 5:* Reduce the amount determined in Step 3 by the amount determined in Step 4, but not to below the amount determined in Step 2.

(F) *Step 6:* The amount includible in the decedent's gross estate under this section is the lesser of the amounts determined in Step 5 and Step 1.

(iii) *Graduated retained interests—(A) In general.* For purposes of this section, a *graduated retained interest* is the grantor's reservation of a right to receive an annuity, unitrust, or other payment as described in paragraph (c)(2)(i) of this section, payable at least annually, that increases (but does not decrease) over a period of time, not more often than annually.

(B) *Other definitions—(1) Base amount.* The *base amount* is the amount of corpus required to generate the annuity,

unitrust, or other payment payable for the trust year in which the decedent's death occurs. See paragraph (c)(2)(i) of this section for the calculation of the base amount.

(2) *Periodic addition.* The *periodic addition* in a graduated retained interest for each year after the year in which decedent's death occurs is the amount (if any) by which the annuity, unitrust, or other payment that would have been payable for that year if the decedent had survived exceeds the total amount of payments that would have been payable for the year immediately preceding that year. For example, assume the trust instrument provides that the grantor is to receive an annual annuity payable to the grantor or the grantor's estate for a 5-year term. The initial annual payment is \$100,000, and each succeeding annual payment is to be 120 percent of the amount payable for the preceding year. Assuming the grantor dies in the second year of the trust (whether before or after the due date of the second annual payment), the periodic additions for years 3, 4, and 5 of the trust are as follows:

	(1) Annual payment	(2) Prior year payment	(1 - 2) Periodic addition
Year 3 .....	144,000	120,000	24,000
Year 4 .....	172,800	144,000	28,800
Year 5 .....	207,360	172,800	34,560

(3) *Corpus amount.* For each trust year in which a periodic addition occurs (increase year), the *corpus amount* is the amount of trust corpus which, starting from the decedent's date of death, is necessary to generate an amount of income sufficient to pay the periodic addition, beginning in the increase year and continuing in perpetuity, without reducing or invading principal. For each year with a periodic addition, the corpus amount required as of the decedent's date of death is the product of two factors: The first is the result of dividing the periodic addition (adjusted for payments made more frequently than annually, if applicable, and for payments due at the beginning, rather than the end, of a payment period (see Table K or J of § 20.2031-7(d)(6)) by the section 7520 rate (periodic addition/rate)); and the second is 1 divided by the sum of 1 and the section 7520 rate raised to the T power  $(1/(1 + \text{rate})^T)$ . The second factor applies a present value discount to reflect the period beginning with the date of death and ending on the last day of the trust year immediately before the year for which the periodic addition is first payable.

(i) The corpus amount is determined as follows:

$$\frac{(\text{Periodic Addition}) \times (\text{Adjustment Factor})}{\text{Section 7520 Rate}} \times \frac{1}{(1 + \text{Section 7520 Rate})^T}$$

(ii) The adjustment factor, if applicable, is the factor for payments made more frequently than annually and for payments due at the beginning, rather than the end, of a calendar period (see Table K or J of § 20.2031-7(d)(6)). T equals the time period in years from the decedent's date of death through the last day of the trust year immediately before the year for which the periodic addition is first payable.

(C) *Amount includible.* The amount includible in the gross estate in the case of a graduated retained interest is the sum of the base amount and the corpus amount for each year for which a periodic addition is first payable. The sum of these amounts represents the

amount of trust principal that would be necessary to generate the annual payments that would have been paid to the decedent if the decedent had survived and had continued to receive the graduated retained interest. The amount of trust corpus includible in a decedent's gross estate under this section, however, shall not exceed the fair market value of the trust corpus on the decedent's date of death. The provisions of this section also apply to graduated retained interests in transferred property not held in trust.

(iv) *Examples.* The application of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section is illustrated in the following examples:

*Example 1.* (i) Decedent (D) transferred \$100,000 to an inter vivos trust that qualifies as a CRAT under section 664(d)(1). The trust agreement provides for an annuity of \$7,500 to be paid each year to D for D's life, then to D's child (C) for C's life, with the remainder to be distributed upon the survivor's death to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). The annuity is payable to D or C, as the case may be, annually on each December 31st. D dies in September 2006, survived by C who was then age 40. On D's death, the value of the trust assets was \$300,000 and the section 7520 interest rate was 6 percent. D's executor does not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D (without reducing or invading principal). In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity / section 7520 interest rate = amount includible under section 2036. The amount of corpus necessary to yield the annual annuity is  $\$7,500 / .06 = \$125,000$ . Therefore, \$125,000 is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had retained an interest in the CRAT for a term of years and had died during the term. The result also would be the same if D had irrevocably relinquished D's annuity interest less than 3 years prior to D's death because of the application of section 2035.) If, instead, the trust agreement had provided that D could revoke C's annuity interest or change the identity of the charitable remainderman, see section 2038 with regard to the portion of the trust to be included in the gross estate on account of such a retained power to revoke. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained annuity. See § 20.2039-1(e).

*Example 2.* (i) D transferred \$100,000 to a GRAT in which D's annuity is a qualified interest described in section 2702(b). The trust agreement provides for an annuity of \$12,000 per year to be paid to D for a term of ten years or until D's earlier death. The annuity amount is payable in twelve equal installments at the end of each month. At the expiration of the term of years or on D's earlier death, the remainder is to be distributed to D's child (C). D dies prior to the expiration of the ten-year term. On the date of D's death, the value of the trust assets is \$300,000 and the section 7520 interest rate is 6 percent. D's executor does not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross

estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D (without reducing or invading principal). In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity (adjusted for monthly payments) / section 7520 interest rate = amount includible under section 2036. The Table K adjustment factor for monthly annuity payments in this case is 1.0272. Thus, the amount of corpus necessary to yield the annual annuity is  $(\$12,000 \times 1.0272) / .06 = \$205,440$ . Therefore, \$205,440 is includible in D's gross estate under section 2036(a)(1). If, instead, the trust agreement had provided that the annuity was to be paid to D during D's life and to D's estate for the balance of the 10-year term if D died during that term, then the portion of trust corpus includible in D's gross estate would still be as calculated in this paragraph. It is not material whether payments are made to D's estate after D's death. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained annuity. See § 20.2039-1(e).

*Example 3.* (i) In 2000, D created a CRUT within the meaning of section 664(d)(2). The trust instrument directs the trustee to hold, invest, and reinvest the corpus of the trust and to pay to D for D's life, and then to D's child (C) for C's life, in equal quarterly installments payable at the end of each calendar quarter, an amount equal to 6 percent of the fair market value of the trust as valued on December 15 of the prior taxable year of the trust. At the termination of the trust, the then-remaining corpus, together with any and all accrued income, is to be distributed to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). D dies in 2006, survived by C, who was then age 55. The value of the trust assets on D's death was \$300,000. D's executor does not elect to use the alternate valuation date and, as a result, D's executor does not choose to use the section 7520 interest rate for either of the two months prior to D's death.

(ii) The amount of the corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036(a)(1), is that amount of corpus necessary to yield the unitrust payments. In this case, such amount of corpus is determined by dividing the trust's equivalent income interest rate by the section 7520 rate (which was 6 percent at the time of D's death). The equivalent income interest rate is determined by dividing the trust's adjusted payout rate by the excess of 1 over the adjusted payout rate. Based on § 1.664-4(e)(3) of this chapter, the appropriate adjusted payout rate for the trust at D's death is 5.786 percent (6 percent  $\times .964365$ ). Thus, the equivalent income interest rate is 6.141 percent (5.786 percent / (1—

5.786 percent)). The ratio of the equivalent interest rate to the assumed interest rate under section 7520 is 102.35 percent (6.141 percent / 6 percent). Because this exceeds 100 percent, D's retained payout interest exceeds a full income interest in the trust, and D effectively retained the income from all the assets transferred to the trust. Accordingly, because D retained for life an interest at least equal to the right to all income from all the property transferred by D to the CRUT, the entire value of the corpus of the CRUT is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had retained, instead, an interest in the CRUT for a term of years and had died during the term.) Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of D's retained unitrust interest. See § 20.2039-1(e).

(iii) If, instead, D had retained the right to a unitrust amount having an adjusted payout for which the corresponding equivalent interest rate would have been less than the 6 percent assumed interest rate of section 7520, then a correspondingly reduced proportion of the trust corpus would be includible in D's gross estate under section 2036(a)(1). Alternatively, if the interest retained by D was instead only one-half of the 6 percent unitrust interest, then the amount included in D's estate would be the amount needed to produce a 3 percent unitrust interest. All of the results in this *Example 3* would be the same if the trust had been a GRUT instead of a CRUT.

*Example 4.* During life, D established a 15-year GRIT for the benefit of individuals who are not members of D's family within the meaning of section 2704(c)(2). D retained the right to receive all of the net income from the GRIT, payable annually, during the GRIT's term. D dies during the GRIT's term. D's executor does not elect to use the alternate valuation date. In this case, the GRIT's corpus is includible in D's gross estate under section 2036(a)(1) because D retained the right to receive all of the income from the GRIT for a period that did not in fact end before D's death. If, instead, D had retained the right to receive 60 percent of the GRIT's net income, then 60 percent of the GRIT's corpus would have been includible in D's gross estate under section 2036. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of D's retained interest. See § 20.2039-1(e).

*Example 5.* In 2003, D transferred \$10X to a pooled income fund that conforms to Rev.

Proc. 88-53, 1988-2 CB 712 (1988) in exchange for 1 unit in the fund. D is to receive all of the income from that 1 unit during D's life. Upon D's death, D's child (C), is to receive D's income interest for C's life. In 2008, D dies. D's executor does not elect to use the alternate valuation date. In this case, the fair market value of D's 1 unit in the pooled income fund is includible in D's gross estate under section 2036(a)(1) because D retained the right to receive all of the income from that unit for a period that did not in fact end before D's death. See § 601.601(d)(2)(ii)(b) of this chapter.

*Example 6.* D transferred D's personal residence to a trust that met the requirements of a qualified personal residence trust (QPRT) as set forth in § 25.2702-5(c) of this chapter. Pursuant to the terms of the QPRT, D retained the right to use the residence for 10 years or until D's prior death. D dies before the end of the term. D's executor does not elect to use the alternate valuation date. In this case, the fair market value of the QPRT's assets on the date of D's death are includible in D's gross estate under section 2036(a)(1) because D retained the right to use the residence for a period that did not in fact end before D's death.

*Example 7.* (i) On November 1, year N, D transfers assets valued at \$2,000,000 to a GRAT. Under the terms of the GRAT, the trustee is to pay to D an annuity for a 5-year term that is a qualified interest described in section 2702(b). The annuity amount is to be paid annually at the end of each trust year, on October 31st. The first annual payment is to be \$100,000. Each succeeding payment is to be 120 percent of the amount paid in the preceding year. Income not distributed in any year is to be added to principal. If D dies during the 5-year term, the payments are to be made to D's estate for the balance of the GRAT term. At the end of the 5-year term, the trust is to terminate and the corpus is to be distributed to C, D's child. D dies on January 31st of the third year of the GRAT term. On the date of D's death, the value of the trust corpus is \$3,200,000, the section 7520 interest rate is 6.8 percent, and the adjustment factor from Table K of § 20.2031-7 is 1.0000. D's executor does not elect to value the gross estate as of the alternate valuation date pursuant to section 2032.

(ii) The amount includible in D's gross estate under section 2036(a)(1) as described in paragraph (c)(2)(iii)(C) of this section is determined and illustrated as follows:

A	B	C	D	E	F	G
GRAT Year	Annual Annuity Payment	Periodic Addition	Required Principal: C x Adj. Factor / 0.068	Deferral Period: Death to GRAT Year	Present Value Factor: $1/(1+.068)^E$	Corpus or Base Amount At Death: D x F
3	144,000	n/a	2,117,647	n/a	n/a	2,117,647
4	172,800	28,800	423,529	0.747945	0.951985	403,193
5	207,360	34,560	508,235	1.747945	0.891372	453,026
					Total:	2,973,866

(iii) Specifically:

(A) *Column A.* First, determine the year of the trust term during which the decedent's death occurs, and the number of subsequent years remaining in the trust term for which the decedent retained or reserved an interest. In this example, D dies during year 3, with two additional years remaining in the term.

(B) *Column B.* Under the formula specified in the trust, the annuity payment to be made on October 31st of the 3rd year of the trust term is \$144,000. Using that same formula, determine the annuity amounts for years 4 and 5.

(C) *Column C.* Determine the periodic addition for year 4 and year 5 by subtracting the annuity amount for the preceding year from the annuity amount for that year; the periodic addition for that year is the amount of the increase in the annuity amount for that year.

(D) *Columns D through G for year 3.* For the year of the decedent's death (year 3), determine the principal required to produce the annuity amount (Column D) by multiplying the annuity amount (Column B) by the adjustment factor (in this case 1.0000) and by dividing the product by the applicable interest rate under section 7520. Because this is the year of decedent's death and reflects the annuity amount payable to the decedent in

that year, there is no deferral, so this is also the Base Amount (the amount of corpus required to produce the annuity for year 3) (Column G).

(E) *Columns D through G for years 4 and 5.* For each succeeding year of the trust term during which the periodic addition will not be payable until a year subsequent to the year of the decedent's death, determine the principal required to produce the periodic addition payable for that year (Column D) by multiplying the periodic addition (Column C) by the adjustment factor and by dividing the product by the applicable interest rate under section 7520. Compute the factors to reflect the length of the deferral period (Column E) and the present value (Column F) as described in paragraph (c)(2)(iii)(B)(3) of this section. Multiply the amount of corpus in Column D by the factors in Columns E and F to determine the Corpus Amount for that year (Column G).

(F) *Column G total.* The sum of the amounts in Column G represents the total amount includable in the gross estate (but not in excess of the fair market value of the trust on the decedent's date of death).

(iv) An illustration of the amount of trust corpus (as of the decedent's death) necessary to produce the scheduled payments is as follows:

		Year 3	Year 4	Year 5	Corpus Amount
2 <sup>nd</sup> Periodic Addition	\$34,560	Deferral period		\$453,026	\$453,026
1 <sup>st</sup> Periodic Addition	\$28,800	Deferral period	\$403,193		\$403,193
Annuity in year of death	\$144,000	\$2,117,647			\$2,117,647
Total amount (sum) included in gross estate					\$2,973,866



(v) A total corpus amount (as defined in paragraph (c)(2)(iii)(B)(3) of this section) of \$2,973,866 constitutes the principal required as of decedent's date of death to produce (without reducing or invading principal) the annual payments that D would have received if D had survived and had continued to receive the retained annuity. Therefore, \$2,973,866 of the trust corpus is includible in D's gross estate under section 2036(a)(1). The remaining \$226,134 of the trust corpus is not includible in D's gross estate under section 2036(a)(1). The result would be the same if D's retained annuity instead had been payable to D for a term of 5 years, or until D's prior death, at which time the GRAT would have terminated and the trust corpus would have become payable to another.

(vi) If, instead, D's annuity was to have been paid on a monthly or quarterly basis, then the periodic addition would have to be adjusted as provided in paragraph (c)(2)(iii)(B)(3) of this section. Specifically, in Column D of the Table for years 4 and 5 in this example, the amount of the principal required would be computed by multiplying the periodic addition by the appropriate factor from Table K or J of § 20.2031-7(d)(6) be-

fore dividing as indicated and computing the amounts in Columns E through G. In addition, Column D in year 3 also would have to be so adjusted. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained interest. See § 20.2039-1(e).

*Example 8.* (i) D creates an irrevocable inter vivos trust. The terms of the trust provide that an annuity of \$10,000 per year is to be paid to D and C, D's child, in equal shares during their joint lives. On the death of the first to die of D and C, the entire \$10,000 annuity is to be paid to the survivor for life. On the death of the survivor of D and C, the remainder is to be paid to another individual, F. Subsequently, D dies survived by C. On D's date of death, the fair market value of the trust is \$120,000 and the section 7520 rate is 7 percent. At the date of D's death, the amount of trust corpus needed to produce D's annuity interest (\$5,000 per year) is \$71,429 (\$5,000/0.07). In addition, assume the present value of C's right to receive \$5,000 annually for the remainder of C's life is \$40,000. The portion of the trust corpus includible in D's gross estate under section 2036(a)(1) is \$102,857, determined as follows:

(ii) <i>Step 1:</i> Fair market value of corpus .....	\$120,000
(iii) <i>Step 2:</i> Corpus required to produce D's date of death annuity (\$5,000/0.07) .....	71,429
(iv) <i>Step 3:</i> Corpus required to produce D's annuity if D had survived C (\$10,000/0.07) .....	142,857
(v) <i>Step 4:</i> Present value of C's interest .....	40,000
(vi) <i>Step 5:</i> The amount determined in Step 3, reduced by the amount determined in Step 4, but not to below the amount determined in Step 2 (\$142,857—\$40,000, but not less than \$71,429) .....	102,857
(vii) <i>Step 6:</i> The lesser of the amounts determined in Steps 5 and 1 (\$102,857 or \$120,000) .....	102,857

(3) *Effective/applicability dates.* Paragraphs (a) and (c)(1)(i) of this section are applicable to the estates of decedents dying after August 16, 1954. Paragraphs (c)(1)(ii) and (c)(2) of this section apply to the estates of decedents dying on or after July 14, 2008. All but the last two sentences at the end of paragraph (c)(1)(i) of this section are applicable to the estates of decedents dying after August 16, 1954. The first, second, and sixth sentences in paragraph (c)(2)(i) of this section and all but the introductory text, *Example 7*, and *Example 8* of paragraph (c)(2)(iv) of this section are applicable to the estates of decedents dying on or after July 14, 2008. Paragraph (b)(1)(ii) of this section, the last two sentences at the end of paragraph (c)(1)(i) of this sec-

tion, *Example 1* of paragraph (c)(1)(ii) of this section, the third, fourth, and fifth sentences in paragraph (c)(2)(i) of this section; paragraph (c)(2)(ii) of this section; paragraph (c)(2)(iii) of this section; and the introductory text, *Example 7*, and *Example 8* of paragraph (c)(2)(iv) of this section are applicable to the estates of decedents dying on or after November 8, 2011.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6501, 25 FR 10869, Nov. 16, 1960; T.D. 9414, 73 FR 40177, July 14, 2008; 73 FR 44648, July 31, 2008; T.D. 9555, 76 FR 69128, Nov. 8, 2011]

#### § 20.2037-1 Transfers taking effect at death.

(a) *In general.* A decedent's gross estate includes under section 2037 the